

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 07.12.2012

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EX.P. 44/2007

SONY KABUSHIKI KAISHA

..... Decree Holder

Through: Ms. Anuradha Sarhotra, Advocate

versus

M/S SONY CERAMICS & ANR

..... Judgement Debtors

Through: Mr B.R. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. Vide consent decree dated 16.01.2006, the judgment debtors were restrained from using the word Sony or any other word deceptively and/or confusingly similar to the trademark Sony, on the goods manufactured and marketed by them or in relation to their business. The settlement between the parties was recorded in IA No. 482/2006. The Judgment Debtors were granted two and a half months from the date of decree to exhaust the existing stock. The case of the decree holder is that the judgment debtor committed breach of the aforesaid consent decree by JD No.2 selling tiles bearing the mark Sony to its investigator on 18.08.2006 and by displaying the mark 'Sony' and the logo 'S' on the signboard and the gate of the premises of JD No.1.

2. The investigator of the decree holder has, in his affidavit way of evidence, stated that he was working with Omnisight Services Private Limited which, *inter alia*, conducts intellectual property inquires and market research on behalf of its clients, including the decree holder and in the second week of August, 2006, he was instructed on behalf of the

decree holder to ascertain whether the judgment debtors, namely, M/s Sony Cermics and M/s S. Kumar Traders were using the trademark Sony on the goods manufactured/marketed/distributed and offered for sale by them. He accordingly conducted investigation in the third week of August, 2006. According to him, on entering the premises of JD No. 2, his attention was drawn to ceramic tiles of various designs and sizes carrying sticker with Sony, printed on them. He also noticed boxes with Sony displayed amongst other boxes in the said premises. According to the witness, JD No. 2 Sanjay, who is the owner of M/s S. Kumar Traders, met him and personally showed Sony printed tiles to him. He accordingly produced two boxes of Sony printed tiles vide invoice Ex. A-3. He has further stated that on arriving at Himmatnagar, Gujarat *en route* to the JD No. 1, he saw a signage with Sony on it at a distance of about one kilometer from the premises of JD No. 1. The photograph of the said signage is Ex.A-4. He has also stated that on approaching the premises of JD No.1, he saw Sony along with a logo S as used by the decree holder painted on the main gate. The photograph of the said gate is annexure A-5 to his affidavit.

3. No evidence has been produced by the judgment debtors and, therefore, the deposition of the witness produced by the decree holder remains unrebutted.

4. Annexure-3 to the affidavit of the Investigator of the decree holder is a copy of the invoice dated 18th August, 2006 issued by judgment debtor No.2 – M/s. S.Kumar Traders for sale of two boxes of tiles. According to the witness of the decree holder, Annexure A-1 is the photograph of the box which was lying in the premises of judgment debtor No.2 at the time he visited the said premises. Annexure A-2 to his affidavit is the photograph

of the tile having the logo 'S' and the name Soni printed on its pack.

I see no reason to disbelieve the unrebutted deposition of Mr. Jha to the effect that Mr. Sanjay, the proprietor of judgment debtor No.2 had met in the shop and had personally shown to him Sony branded tiles. There is absolutely no reason to disbelieve his deposition that he had purchased two boxes of Sony brand tiles from Mr. Sanjay proprietor of Judgment Debtor No.2. It was pointed out by the learned counsel for the judgment debtors that no brand name of the tile has been noted on the invoice Annexure 'A-3'. It has come in the affidavit of Mr. Jha that Mr. Sanjay deliberately did not mention the name Sony on the invoice. Considering the fact that a consent decree had been passed restraining the judgment debtors from selling any product under the name Sony, it is quite natural that while selling tiles bearing the name/mark Sony, judgment debtor No.2 would not write the name of the brand in the invoice issued by him. He knows that issuing an invoice for sale of tiles under the name 'Sony' would be a documentary proof of his having disobeyed the consent decree passed by this Court and the minimum precaution, which a person seeking to violate the decree would take is not to write the brand name of the products on the invoices. It would be pertinent to note here that the invoice does not bear any brand name at all. Thus, it is not as if the invoice bears a brand other than 'Sony'. The goods were described only as glaze tiles without specifying any brand, in the invoices. Therefore, the deposition of the investigator of the Decree Holder appears quite plausible and trustworthy.

In terms of the consent decree, the judgment debtors, were given two and a half months from the date of the decree to liquidate the existing stocks. The decree having

been passed on 16.01.2006, the period of two and a half months expired on 31.03.2006. The tiles, as per Investigator of the Decree Holder were sold much later on 18.8.2006. I am, therefore, satisfied that the Judgment Debtor No.2 disobeyed the consent decree of injunction passed by this Court on 16.01.2006 by selling the tiles bearing the trademark/name 'Sony', on 18.8.2006.

5. It has also come in the deposition of Mr. Roopak Jha that on arriving at Himmatnagar in *enrouted* the unit of Judgment Debtor No.1, he saw a signage under the name 'Sony Ceramic' at a distance of about one km from its premises. The signage also had the logo 'S' painted on it. Annexure-4 is the photograph of the said signage. There is no evidence to rebut this part of deposition of the investigator of the decree holder. No evidence has been produced by the Judgment Debtor to controvert the deposition made by the witnesses. The signboard bears the name 'Sony Ceramics', therefore, it could not have been the signboard of any person other than the Judgment Debtor No.1, who carries on business under the name 'Sony Ceramics'. By displaying the signage under the name 'Sony Ceramics', which also bears the logo 'S' of the Decree Holder, the Judgment Debtor No.1 clearly violated the consent decree of injunction passed by this Court on 16.01.2006.

The Investigator of the Decree Holder, when he visited the premises of judgment debtor no.1, found that the name 'Sony Ceramics' along with the logo 'S' was painted on the main gate of the premises. The photograph taken by the investigator is Annexure A-5 to the affidavit. Again there is no evidence produced by the Judgment Debtor No.1 to controvert the deposition of the Investigator of the Decree Holder. Moreover, this is not

the case of the JD-1 that the premises shown in the Photograph A-5 to the affidavit of the witness is not the photograph of its premises. Therefore, JD-1, contravened the consent decree passed by this Court by using the name 'Sony Ceramics' along with the logo 'S' on the gate of its premises.

6. Under the compromise with the decree holder, as recorded in the application under Order 23 Rule 3 of CPC (IA No.482/2006), the judgment debtors had agreed to pay without any demur or protest a sum of Rs.5 lac to the decree holder in the event of default/breach of any of the conditions set out therein, by them. They had also agreed that the consent decree was a money decree for each and other purpose and shall become executable immediately on the breach/default by them on any of the conditions set out therein. Consequently, the judgment debtors are liable to pay the aforesaid amount to the decree holder.

7. The judgment debtors are directed to pay a sum of Rs.2,50,000/- each to the decree holder within four weeks from today failing which the decree holder shall be entitled to recover the said amount by applying for attachment and sale of their movable and immovable properties as if it is seeking execution of a money decree. If the aforesaid amount is not paid within four weeks from today, it shall carry interest @ 12% per annum from the date of the order till payment.

The petition stands disposed of accordingly.

V.K. JAIN, J

DECEMBER 07, 2012/bg/rd/sn